

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Newland Derrick Hambrick,

Case No. 22-cv-2956 (NEB/DTS)

Petitioner,

v.

REPORT AND RECOMMENDATION

State of Minnesota,

Respondent.

On January 24, 2023, this Court ordered Petitioner Newland Derrick Hambrick to submit “an amended [28 U.S.C.] § 2254 petition, either on [a] provided template or in a format substantially following the template’s.” Order 2, Dkt. No. 9. (The same order required the Clerk of Court to send Hambrick a copy of this District’s template form for habeas petitions subject to § 2254. *See id.*) Hambrick’s deadline to submit the amended petition was January 11, 2023. *See id.* After Hambrick updated his mailing address with the Court, the Court extended his deadline to February 9, 2023. *See* Order 1, Dkt. No. 10.

This amended deadline has passed, and Hambrick has not submitted an amended § 2254 petition. Accordingly, under Rule 41(b) of the Federal Rules of Civil Procedure, this Court now recommends dismissing this action without prejudice for failure to prosecute. *See, e.g., Henderson v. Renaissance Grand Hotel*, 267 F. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”). Given this resolution, the Court further recommends denying as moot Hambrick’s (1) Application to Proceed in District Court Without Prepaying Fees or Costs, Dkt. No. 3, and (2) motion to vacate judgment, Dkt. No. 7.

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, the Court RECOMMENDS THAT:

1. This action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.
2. Petitioner Derrick Newland Hambrick's Application to Proceed in District Court Without Prepaying Fees or Costs, Dkt. No. 3, and motion to vacate judgment, Dkt. No. 7, both be **DENIED** as moot.

Dated: February 22, 2023

s/David T. Schultz
DAVID T. SCHULTZ
U.S. Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).